

LOS ANGELES WATERKEEPER

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES COASTKEEPER, a non-  
profit corporation, doing business as  
SANTA MONICA BAYKEEPER,

Plaintiff,

v.

C & M METALS, INC., a California  
corporation, GLORY RECYCLING, INC., a  
California corporation, C & M MONROE  
FAMILY LLC, a California limited liability  
company,

Defendants.

Case No.: CV 12-04799 DDP (FMOx)

**CONSENT DECREE AND ORDER**

**(Federal Water Pollution Control Act,  
33 U.S.C. § 1251 *et seq.*)**

Judge: Hon. Dean D. Pregerson

1           **WHEREAS**, Los Angeles Waterkeeper, d.b.a. Santa Monica Baykeeper,<sup>1</sup>  
 2 (hereinafter “Waterkeeper”) is a 501(c)(3) non-profit public benefit corporation  
 3 organized under the laws of the State of California, with its main office in Santa  
 4 Monica, California.

5           **WHEREAS**, Waterkeeper is dedicated to the preservation, protection and  
 6 defense of the rivers, creeks and coastal waters of the Los Angeles County from all  
 7 sources of pollution and degradation;

8           **WHEREAS**, the C & M Metals facility is located at 1709 East 24th Street,  
 9 Los Angeles, California (“C & M Facility” or “Facility”).

10          **WHEREAS**, the C & M Facility is owned and/or operated by C & M Metals,  
 11 Inc., a California corporation, and C& M Monroe Family, LLC, a California  
 12 limited liability company(hereinafter collectively referred to as “Defendants” or “C  
 13 & M Metals”);

14          **WHEREAS**, on March 23, 2012, Waterkeeper sent a sixty (60) day notice  
 15 letter (“Notice Letter”) to Defendants, the United States Environmental Protection  
 16 Agency (“EPA”), EPA Region IX, the State Water Resources Control Board  
 17 (“State Board”) and the Regional Water Quality Control Board (“Regional  
 18 Board”), stating its intent to file suit for violations of the Federal Water Pollution  
 19 Control Act, 33 U.S.C. §§ 1251, *et seq.* (“Clean Water Act” or “CWA”). The  
 20 Notice Letter alleged violations of the Clean Water Act for Defendants’ alleged  
 21 discharges of pollutants into storm drains and receiving waters, including the  
 22 Ballona Creek and Estuary and ultimately the Pacific Ocean, in violation of  
 23 \_\_\_\_\_

24 <sup>1</sup> Plaintiff Los Angeles Coastkeeper, d.b.a. Santa Monica Baykeeper, officially  
 25 changed its name to Los Angeles Waterkeeper on July 25, 2012. Los Angeles  
 26 Coastkeeper and Santa Monica Baykeeper are fictitious business names of Los  
 Angeles Waterkeeper, duly registered with the Los Angeles County Clerk.

1 National Pollution Discharge Elimination System (“NPDES”) General Permit No.  
2 CAS000001 [State Board] Water Quality Order No. 92-12-DWQ, as amended by  
3 Order No. 97-03-DWQ (“Storm Water Permit”);

4 **WHEREAS**, on June 1, 2012 Waterkeeper filed a complaint (“Complaint”)  
5 against Defendants in the United States District Court, Central District of  
6 California (Case No.CV-12-04799 DDP (FMOx)), entitled *Los Angeles*  
7 *Coastkeeper, d.b.a. Santa Monica Baykeeper v. C & M Metals, Inc. et al.*;

8 **WHEREAS**, the Defendants deny all allegations of the Complaint;

9 **WHEREAS**, Plaintiff and Defendants (collectively referred to herein as the  
10 “Settling Parties” or “Parties”) agree that it is in the Parties' mutual interest to enter  
11 into a Consent Decree setting forth terms and conditions appropriate to resolving  
12 the allegations set forth in the Complaint without further proceedings;

13 **WHEREAS**, all actions taken by Defendants pursuant to this Consent  
14 Decree shall be made in compliance with all applicable federal, state and local  
15 rules and regulations;

16 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**  
17 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT**  
18 **AS FOLLOWS:**

19 1. The Court has jurisdiction over the subject matter of this action  
20 pursuant to Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

21 2. Venue is appropriate in the Central District Court pursuant to Section  
22 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the Facility at which the  
23 alleged violations took place is located within this District;

24 3. The Complaint states a claim upon which relief may be granted  
25 against Defendants pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

26 4. Waterkeeper has standing to bring this action;

27 5. The Court shall retain jurisdiction over this matter for purposes of  
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1 interpreting, modifying or enforcing the terms of this Consent Decree, or as long  
 2 thereafter as is necessary for the Court to resolve any motion to enforce this  
 3 Consent Decree.

#### 4 **I. OBJECTIVES**

5 6. It is the express purpose of the Parties entering into this Consent  
 6 Decree to further the objectives set forth in the Clean Water Act, 33 U.S.C. §§  
 7 1251, *et seq.*, and to resolve those issues alleged by Waterkeeper in its Complaint.  
 8 In light of these objectives and as set forth fully below, Defendants agree, *inter*  
 9 *alia*, to comply with the provisions of this Consent Decree and to comply with the  
 10 requirements of the Storm Water Permit and all applicable provisions of the CWA.  
 11 Specifically, Receiving Water Limitation C(2) in the Storm Water Permit requires  
 12 that the C & M Facility “not cause or contribute to the exceedance of an applicable  
 13 water quality limit.” Effluent Limitation B(3) of the Storm Water Permit requires  
 14 that Best Management Practices (“BMPs”) be developed and implemented to  
 15 achieve Best Available Technology (“BAT”) and Best Conventional Pollutant  
 16 Control Technology (“BCT”). C & M Metals shall develop and implement BMPs  
 17 necessary to comply with the Storm Water Permit requirement to achieve  
 18 compliance with BAT/BCT standards and with the applicable Water Quality  
 19 Standards.<sup>2</sup> BMPs must be developed and implemented to prevent discharges or to  
 20 reduce contamination in storm water discharged from the C & M Facility sufficient  
 21 to achieve the numeric limits detailed in paragraphs 16 and 17 (if applicable) of  
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23 <sup>2</sup> Water Quality Standards are the water quality criteria contained in the Water  
 24 Quality Control Plan: Los Angeles Region, Basin Plan for the Coastal Watersheds  
 25 of Los Angeles and Ventura Counties (“Basin Plan”), the California Ocean Plan,  
 26 the National Toxics Rule, the California Toxics Rule, and other state or federally  
 27 approved surface water quality plans.  
 28

1 this Consent Decree.

## 2 **II. EFFECTIVE DATE AND TERMINATION**

3 7. The term “Effective Date,” as used in this Consent Decree, shall mean  
4 the last day for the United States Department of Justice and the United States  
5 Environmental Protection Agency (collectively “Federal Agencies”) to comment  
6 on the Consent Decree, i.e., the 45th day following the Federal Agencies’ receipt  
7 of the Consent Decree, or the date on which the Federal Agencies provide notice  
8 that they require no further review and the Court enters the final Consent Decree,  
9 whichever occurs earlier.

10 8. At the conclusion of the fifth Wet Season (defined as October 1  
11 through May 31, hereinafter “Wet Season”), after the entry of this Consent Decree  
12 and no earlier than June 15, 2018, Defendants may submit a written request to  
13 terminate this Consent Decree to Waterkeeper. C & M Metals may move the Court  
14 to terminate the Consent Decree prior to June 15, 2018 if no numeric limit in Table  
15 1 or Table 2 (if infiltration is implemented at the site) is exceeded for nine (9)  
16 consecutive wet weather samples beginning with the 2013-2014 Wet Season and  
17 there is no ongoing, unresolved dispute regarding Defendants’ compliance with the  
18 Consent Decree.

19 9. Upon receipt of the written request to terminate, Waterkeeper may  
20 conduct an inspection of the C & M Facility within thirty (30) days and C & M  
21 Metals will work with Waterkeeper to schedule and accommodate the inspection,  
22 if requested, within the 30-day period. The inspection will be conducted according  
23 to the rules applicable to Annual Site Inspections in paragraph 31 below. Unless  
24 there is an ongoing, unresolved dispute regarding Defendants’ compliance with  
25 this Consent Decree, sixty (60) days after written notice was given, Defendants  
26 may move the Court to terminate the Consent Decree and Waterkeeper shall not  
27 oppose the motion.  
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### 1 **III. COMMITMENTS OF THE PARTIES**

#### 2 **A. Industrial Storm Water Pollution Control Measures**

3 10. To ensure there are no unauthorized non-stormwater discharges, any  
4 non-stormwater discharges from the Facility not authorized by the Storm Water  
5 Permit shall be considered a breach of this Consent Decree.

6 11. Any storm water pollution measures required by this Consent Decree  
7 will be implemented in addition to the existing StormwaterRx systems<sup>3</sup> operating at  
8 the C & M Facility. The StormwaterRx systems will be operated and maintained  
9 throughout the year and according to a maintenance schedule agreed to by both  
10 Waterkeeper's consultant and Defendants' consultant. The maintenance schedule  
11 will be agreed upon as part of Defendants' BMP Plan specified in paragraph 13  
12 below. Any disputes over the adequacy of the StormwaterRx systems maintenance  
13 schedule shall be resolved pursuant to the dispute resolution provisions of this  
14 Consent Decree, set out in Section IV below.

15 12. Compliance Standard. The storm water pollution control measures  
16 required by this Consent Decree shall be designed and operated to manage through  
17 infiltration, treatment and/or diversion the storm water runoff generated by the 95<sup>th</sup>  
18 percentile storm event occurring over 24 hours, based on historical rainfall  
19 measured at the Downtown USC Campus Rain Gauge (auto rain gauge reference  
20 ID 375-USC) from 1980 through 2010, or 1.92 inches ("Compliance Standard").  
21 The storm water pollution control measures agreed to under this Consent Decree  
22 shall be operated throughout the entire year. For purposes of this Consent Decree,  
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24 <sup>3</sup> The facility has a StormwaterRx system that consists of a settling tank, Clara  
25 Filter, and an Aquip media filter that is located in Area #1 – the west side of the  
26 property. The settling tank, Clara, and Aquip have a storage capacity of  
27 approximately 4,000 gallons.  
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properly documented discharges of storm water and/or storm water pollutants from the C & M Facility in connection with rainfall events that exceed the Compliance Standard are not a violation of this Consent Decree and are not subject to the paragraph 16 requirement to meet Table 1 Surface Water Numeric Limits.

13. BMP Plan. Defendants shall develop and submit to Waterkeeper for review and comment a plan for the installation of an infiltration gallery to capture storm water or the installation of other storm water treatment device(s) and BMPs at the C & M Facility, according to the requirements of paragraph 12 (“BMP Plan”). Defendants shall submit the BMP Plan within 60 days of the Effective Date of this Consent Decree.

14. Waterkeeper will have 30 days to review and comment in writing on the BMP Plan. Defendants shall have 21 days to accept Waterkeeper’s comments and incorporate them into the BMP Plan, or to respond to Waterkeeper’s comments in writing, explaining why the comments were not accepted and incorporated. Disputes regarding the adequacy of the BMP Plan shall be subject to the Dispute Resolution provisions in Section IV of this Consent Decree.

15. The BMP Plan shall be completely implemented and functioning at the Facility no later than October 1, 2013. Following October 1, 2013, storm water discharges from the Facility occurring as a result of storm events that are equal to or less than the Compliance Standard specified in paragraph 12 above must meet the Surface Water Numeric Limits in Table 1. In addition, discharges that are treated through an infiltration gallery installed at the C & M Facility must meet the Vadose Zone Numeric Limits in Table 2.

#### **B. Numeric Limits**

16. Numeric Limits for Storm Water Discharges. Contaminants in storm water discharges from the C & M Facility shall not exceed the limits (“Surface Water Numeric Limits”) in Table 1. Except as applied to discharges during the



2012-2013, 2013-2014, 2014-2015 and 2015-2016 Wet Seasons, and except as set forth in paragraph 12, the presence of any contaminant in any discharge from the Facility in excess of, or outside the range of, the Numeric Limits in Table 1 is a breach of this Consent Decree.

**Table 1. Surface Water Numeric Limits**

Contaminant	Numeric Limit <sup>4</sup> (All but pH expressed as mg/L)
Total Suspended Solids	100 mg/L
Copper	0.013 mg/L*
Lead	0.065 mg/L*
Zinc	0.120 mg/L*
Oil and Grease	15 mg/L
Aluminum	0.75 mg/L
Arsenic	0.340 mg/L*
Cadmium	0.0043 mg/L*
Iron	1.00 mg/L
Mercury	0.0024 mg/L
Nickel	0.470 mg/L*

<sup>4</sup> Note: An \* next to a Numeric Limit denotes a CTR Limit. The limits for pH and COD are from the Basin Plan. Compliance with the Numeric Limits for metals will be based on evaluation of dissolved concentrations only. CTR Limits are expressed as a function of total hardness in the water body based on the equations provided in Federal Register, Vol. 65, No. 97, May 18, 2000, and being hardness dependent will vary with the analyzed total hardness of the water body. The CTR Criterion Maximum levels expressed herein assume a total hardness of 100 mg/L.



1	Silver	0.0034 mg/L*
2	Chemical oxygen demand	120 mg/L
3	pH	6.5-8.5
4	Chromium (III)	0.550 mg/L*
5	Chromium (VI)	0.016 mg/L*

6  
7       17.   Numeric Limits for Infiltrated Discharges. Contaminants from C & M  
8 Facility discharges infiltrated into an infiltration gallery designed according to the  
9 requirements of paragraph 12 above shall not exceed the limits (“Vadose Zone  
10 Numeric Limits”) in Table 2. Except as applied to discharges during the 2012-  
11 2013, 2013-2014, 2014-2015 and 2015-2016 Wet Seasons, the presence of any  
12 contaminant in the Facility’s vadose zone in excess of, or outside the range of, the  
13 Vadose Zone Numeric Limits in Table 2 is a breach of this Consent Decree.

14   **Table 2. Vadose Zone Numeric Limits**

15	<b>Contaminant</b>	<b>MCL</b>
16	Aluminum	0.05 to 0.2 mg/L
17	Arsenic	0.010 mg/L
18	Cadmium	0.005 mg/L
19	Copper	1.0 mg/L
20	Iron	0.3 mg/L
21	Lead	0.015 mg/L
22	Mercury	0.002 mg/L
23	Silver	0.10 mg/L
24	Zinc	5 mg/L

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26       18.   Surface Water Action Plan for Table 1 Exceedances. Defendants shall  
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1 submit a plan for reducing and/or eliminating the discharge of pollutants (“Surface  
2 Water Action Plan”) if any sampling during the Wet Season demonstrates that any  
3 contaminant in any discharge from the Facility exceeds the applicable limit for any  
4 contaminant found in Table 1. In any year that a Surface Water Action Plan is  
5 required, it shall be submitted by July 30 following the Wet Season in which the  
6 exceedances giving rise to the obligation to submit a Surface Water Action Plan  
7 have occurred.

8           a. Surface Water Action Plan Requirements. Each Surface Water  
9 Action Plan submitted shall be in writing and shall include at a minimum: (1) the  
10 identification of the pollutant(s) discharged in excess of the Numeric Limit(s), (2)  
11 an assessment of the source of each pollutant exceedance, (3) the identification of  
12 additional BMPs, which may include treating storm water prior to discharge from  
13 the Facility, that will be implemented to achieve compliance with the Numeric  
14 Limit(s), and (4) time schedules for implementation of the proposed BMPs.

15           b. Surface Water Action Plan Review. Waterkeeper shall have 30  
16 days upon receipt of Defendants’ Surface Water Action Plan to provide Defendants  
17 with comments. Within 30 days from the date Waterkeeper comments on  
18 Defendants’ Surface Water Action Plan, Defendants shall provide Waterkeeper  
19 with a written explanation if Defendants refuse to develop and/or implement any of  
20 Waterkeeper’s recommended additional BMPs. Any disputes as to the adequacy of  
21 the Surface Water Action Plan shall be resolved pursuant to the dispute resolution  
22 provisions of this Consent Decree, set out in Section IV below.

23           c. If any structural BMPs require any government agency approval,  
24 then Defendants shall contact Waterkeeper to request an extension of the deadline,  
25 if necessary, to implement the structural BMPs requiring agency approval.  
26 Waterkeeper’s consent to Defendants’ requested extension shall not be  
27 unreasonably withheld.  
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1 d. Defendants shall have until October 1 (following the Wet Season in  
2 which the exceedances giving rise to the obligation to submit a Surface Water  
3 Action Plan occurred) to implement the Surface Water Action Plan. Defendants  
4 shall notify Waterkeeper in writing when the Surface Water Action Plan has been  
5 implemented.

6 19. Groundwater Action Plan for Table 2 Exceedances. If Defendants  
7 construct an infiltration basin to meet the Consent Decree requirements,  
8 Defendants shall submit a written plan for reducing and/or eliminating the  
9 discharge of pollutants in storm water infiltrated at the Facility (“Groundwater  
10 Action Plan”) when vadose zone sampling during the Wet Season demonstrates  
11 that any contaminant specified in Table 2 exceeds the Vadose Zone Numeric  
12 Limits.

- 13 a. The Groundwater Action Plan must be submitted to Waterkeeper  
14 within thirty (30) days of Defendants’ receipt of sampling data  
15 showing exceedances of Table 2 Vadose Zone Numeric Limits.
- 16 b. At a minimum the Groundwater Action Plan shall include increased  
17 source control to prevent pollutant exposure to storm water. In  
18 addition, the Groundwater Action Plan may include: literature  
19 research regarding background concentrations of metals in soil and  
20 groundwater; collection and analysis of background soil, pore water,  
21 and groundwater samples, additional monitoring of the existing  
22 lysimeters; installation and monitoring of deeper lysimeters;  
23 installation and monitoring of upgradient/downgradient groundwater  
24 wells; vadose zone modeling; additional pretreatment BMPs, or other  
25 methods as appropriate to assess or to mitigate the potential for  
26 exceedances of MCL in groundwater.

- 27 c. Waterkeeper shall provide comments, if any, to Defendants within 30  
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1 days of receipt. Defendants shall incorporate the Waterkeeper's  
 2 comments into the Groundwater Action Plan and issue a report within  
 3 14 days of receiving Waterkeeper's comments. If any of  
 4 Waterkeeper's comments are not utilized, Defendants shall justify in  
 5 writing why any comment is not being incorporated within 14 days of  
 6 receiving comments. Any disputes as to the adequacy of the  
 7 Groundwater Action Plan shall be resolved pursuant to the dispute  
 8 resolution provisions of this Consent Decree, set out in Section IV  
 9 below.

- 10 d. If any structural BMPs require any government agency approval, then  
 11 Defendants shall contact Waterkeeper to request an extension of the  
 12 deadline, if necessary, to implement the structural BMPs requiring  
 13 agency approval. Waterkeeper's consent to Defendants' requested  
 14 extension shall not be unreasonably withheld.
- 15 e. Defendants shall have until October 1 (following the Wet Season in  
 16 which the exceedances giving rise to the obligation to submit a  
 17 Groundwater Action Plan occurred) to implement the Groundwater  
 18 Action Plan. Defendants shall notify Waterkeeper in writing when the  
 19 Groundwater Action Plan has been implemented.

20 **C. Sampling and Monitoring at the Facility**

21 20. Sample Analysis and Sample Frequency. The Defendants shall  
 22 collect storm water samples from each discharge location at the Facility from at  
 23 least five (5) storm events per Wet Season. The Defendants must sample the  
 24 Facility's storm water discharge(s) from the first storm event in each Wet Season.  
 25 The Defendants must continue to sample storm water discharges from each storm  
 26 event that produces a discharge until a total of five (5) storm events have been  
 27 sampled. For purposes of this Consent Decree, this includes any storm water  
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1 discharge occurring during the Facility's operating hours,<sup>5</sup> or, if storm water is  
2 stored onsite prior to discharge, whenever storm water is released outside these  
3 hours. Any failure to sample a discharge from each discharge location at the  
4 Facility until five (5) storm events per Wet Season have been sampled shall be  
5 documented and submitted to Waterkeeper within five (5) days of the date a  
6 sample could have been collected but was not. The Defendants shall analyze  
7 samples collected for the constituents identified in Table 1. Defendants shall use a  
8 state certified laboratory to conduct all analysis pursuant to this Consent Decree.  
9 The Defendants shall select laboratories and analytical limits such that, at a  
10 minimum, the method detection limits are below the Surface Water Numeric  
11 Limits in Table 1.

12 21. If Defendants install an infiltration gallery according to the  
13 requirements of paragraph 12 above, the Defendants shall be required to collect  
14 and analyze samples from any and all storm water discharges occurring during any  
15 and all storm events that occur during operating hours and that generate runoff  
16 from the C & M Facility. Any discharges that occur outside the Facility's operating  
17 hours will be monitored using a flow totalizer capable of recording the volume of  
18 runoff that occurs. Failure to monitor and /or sample such storm water discharges  
19 will be a violation of this Consent Decree. The Defendants shall analyze samples  
20 collected for the constituents identified in Table 1. Defendants shall use a state  
21 certified laboratory to conduct all analysis pursuant to this Consent Decree. The  
22 Defendants shall select laboratories and analytical limits such that, at a minimum,  
23 the method detection limits are below the Surface Water Numeric Limits in Table  
24 \_\_\_\_\_

25 <sup>5</sup> The C & M Facility's operating hours are Monday through Saturday, 8 am –4:30  
26 pm.  
27  
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1 1.

2 22. Defendants shall submit a written report to Waterkeeper at the end of  
3 each Wet Season listing all storm events that occurred and resulted in a discharge  
4 at the Facility's stormwater outfalls. The report is due on July 30 every year during  
5 the term of this Consent Decree and must include all analytical results from storm  
6 water samples collected at the C & M Facility.

7 23. Groundwater Monitoring. If Defendants install an infiltration gallery,  
8 the Defendants shall install a suction lysimeter vertically below and within the  
9 ponding area of the infiltration gallery at the Facility. Defendants shall collect  
10 samples of infiltrating stormwater from the suction lysimeter ("Vadose Zone  
11 Samples"). These Vadose Zone Samples shall be collected every time there is a  
12 storm event of 0.1 inch for at least four separate storm events each Wet Season and  
13 within 24 hours after rainfall ends. The lysimeter samples from the four separate  
14 storm events shall be analyzed for the metals (both total recoverable and dissolved)  
15 listed in Table 2 above. Defendants shall compare the results of this analysis with  
16 the levels of Table 2.

17 24. Revising the M&RP. Within thirty (30) days of the Effective Date of  
18 this Consent Decree, the Defendants shall revise its M&RP for the Facility to  
19 incorporate the requirements of this Consent Decree and the Storm Water Permit,  
20 including, if Defendants install an infiltration gallery, the Groundwater Monitoring  
21 requirements in paragraph 21 of the Consent Decree. The revised M&RP shall  
22 require that the samples taken from the Facility's storm water discharges pursuant  
23 to the Storm Water Permit are analyzed for the constituents identified in Table 1 in  
24 addition to any other constituents required by the Storm Water Permit. The  
25 Defendants shall submit the revised M&RP to Waterkeeper for review and  
26 comment as soon as it is completed but in any event no later than thirty (30) days  
27 of the Effective Date. Waterkeeper shall provide comments, if any, to the  
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1 Defendants within thirty (30) days of receipt of the M&RP. The Defendants shall  
2 incorporate Plaintiff's comments into the M&RP, or shall justify in writing why  
3 any comment is not incorporated within thirty (30) days of receiving comments.  
4 Any disputes over the adequacy of the revised M&RP shall be resolved pursuant to  
5 the dispute resolution provisions of this Consent Decree, set out in Section IV  
6 below.

7 **D. Storm Water Pollution Prevention Plan**

8 25. SWPPP Revisions. Within thirty (30) days of the Effective Date of  
9 this Consent Decree, Defendants shall revise the SWPPP to identify (1) current  
10 BMPs, (2) BMPs developed pursuant to this Consent Decree to control the  
11 discharge of pollutants from the Facility, (3) a description of all industrial  
12 activities, (4) corresponding potential pollutant sources for industrial activities, and  
13 (5) a description of the potential pollutants from each source. The Defendants shall  
14 submit the revised SWPPP to Waterkeeper for review and comment as soon as it is  
15 completed, but in any event no later than thirty (30) days of the Effective Date.  
16 Waterkeeper shall provide comments, if any, to Defendants within thirty (30) days  
17 of receipt of the SWPPP. Defendants shall incorporate Plaintiff's comments into  
18 the SWPPP, or shall justify in writing why any comment is not incorporated within  
19 thirty (30) days of receiving comments. Any disputes as to the adequacy of the  
20 revised SWPPP shall be resolved pursuant to the dispute resolution provisions of  
21 this Consent Decree, set out in Section IV below.

22 **E. Employee Training**

23 26. Within thirty (30) days of the Effective Date, Defendants shall  
24 develop a training program, including any training materials, as necessary, for  
25 effective implementation of the training program ("Training Program").

26 27. The Training Program shall ensure (a) that there are a sufficient  
27 number of employees delegated to achieve compliance with the Storm Water  
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1 Permit and this Consent Decree, and (b) that these employees are properly trained  
2 to perform the required compliance activities. Such Training Program shall be  
3 specified in the SWPPP.

4 28. The Training Program shall require specific training to include at least  
5 the following:

6 a. Non-Storm Water Discharge Training. The Defendants shall train  
7 all employees handling scrap metal at the C & M Facility on the Storm Water  
8 Permit's prohibition of non-storm water discharges so that employees know what  
9 non-storm water discharges are, how to detect them, and how to prevent them;

10 b. BMP Training. The Defendants shall train all employees  
11 responsible for BMP implementation and maintenance to ensure that BMPs are  
12 used effectively to prevent the exposure, discharge, and/or treatment of storm  
13 water at the Facility

14 c. Sampling Training. The Defendants shall train all individuals  
15 collecting samples at the Facility pursuant to this Consent Decree or the Storm  
16 Water Permit on the proper sampling protocols, including chain of custody  
17 requirements, to ensure storm water and/or non-storm water samples are properly  
18 collected, stored, and submitted to a certified laboratory;

19 d. Visual Observation Training. The Defendants shall provide training  
20 to all individuals performing visual observations at the Facility pursuant to this  
21 Consent Decree and the Storm Water Permit.

22 29. Training shall be provided by a private consultant or a representative  
23 of Defendants familiar with the requirements of this Consent Decree and the Storm  
24 Water Permit, and shall be repeated as necessary to ensure that all such employees  
25 are familiar with the requirements of this Consent Decree, the Storm Water Permit,  
26 and the Facility's SWPPP. All new staff shall receive this training before  
27 assuming responsibilities for implementing the SWPPP or M&RP.  
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1           30. The Defendants shall maintain training records to document  
2 compliance with this paragraph, and shall provide Waterkeeper with a copy of  
3 these records within fourteen (14) days of receipt of a written request.

4           **F. Compliance Monitoring and Reporting**

5           31. Annual Site Inspections. Up to three Waterkeeper representatives or  
6 consultants (including an attorney), may conduct one inspection (“Site Inspection”)  
7 at the Facility each year that this Consent Decree is in effect. Site Inspections shall  
8 occur during normal business hours and Waterkeeper shall provide Defendants  
9 with as much notice as possible, but at least twenty-four (24) hours notice prior to  
10 a Site Inspection during wet weather, and seventy-two (72) hours notice prior to a  
11 Site Inspection during dry weather. Notice will be provided by telephone and  
12 electronic mail. During the Site Inspection, Defendants shall allow Waterkeeper  
13 and/or its representatives access to the Facility’s SWPPP, M&RP, monitoring  
14 records, and to all monitoring reports and data for the Facility. During the Site  
15 Inspection, Defendants shall allow Waterkeeper and/or its representatives to collect  
16 samples of storm water or non-stormwater discharges and samples from any  
17 infiltration galleries at the Facility. Waterkeeper shall be permitted to take  
18 photographs or video recording during any Site Inspection pursuant to this  
19 paragraph. If Waterkeeper takes photographs and/or video recording, Waterkeeper  
20 shall provide Defendants with the photographs and/or video within fourteen (14)  
21 days after any written request by Defendants for such photographs and/or videos.  
22 Waterkeeper agrees that all individuals who will participate in a Site Inspection  
23 will execute a waiver and release prior to the Site Inspection. Waterkeeper also  
24 agrees that all individuals who will participate in the Site Inspection will sign a  
25 sign-in sheet when they arrive at the Facility.

26           32. Waterkeeper’s Compliance Monitoring. Defendants agree to  
27 compensate Waterkeeper for time to be spent monitoring the Defendants’  
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1 compliance with the Consent Decree. To this end, the Defendants shall pay  
 2 Waterkeeper the sum of Five Thousand Dollars (\$5,000) within fifteen (15) days of  
 3 the Effective Date. This payment shall be submitted and made payable to “Los  
 4 Angeles Waterkeeper,” addressed to Los Angeles Waterkeeper, 120 Broadway,  
 5 Suite 105, Santa Monica, California 90401, and sent via courier or overnight  
 6 delivery.

7       33. Data Reporting. During the life of this Consent Decree, the  
 8 Defendants shall provide Waterkeeper with a copy of all consent decree and Permit  
 9 compliance and monitoring data, including inspection reports, related to the  
 10 Facility’s coverage under the Storm Water Permit on a monthly basis. The  
 11 Defendants shall provide Waterkeeper with all laboratory analyses related to  
 12 sampling at the Facility within fourteen (14) days of the Defendants’ receipt of  
 13 such information.

14       34. Document Provision. During the life of this Consent Decree, the  
 15 Defendants shall copy Waterkeeper on all documents and communications related  
 16 to water quality at the Facility that are submitted to the Regional Board, the State  
 17 Board, and/or any State, local agency, county, or municipality. Such reports and  
 18 documents shall be provided to Waterkeeper concurrently as they are sent to the  
 19 agencies and/or municipalities. Any correspondence related to water quality  
 20 received by the Defendants from any regulatory agency, State or local agency,  
 21 county, or municipality shall be provided within three (3) business days of receipt  
 22 by the Defendants.

23       **G. Environmental Project, Reimbursement of Litigation Fees and**  
 24       **Costs, and Stipulated Penalties**

25       35. Environmental Project. The Defendants agree to make a payment of  
 26 Twenty-Five Thousand Dollars (\$25,000) within fifteen(15) days of the Effective  
 27 Date to the Rose Foundation for Communities and the Environment for a project  
 28

1 related to water quality designed to analyze, reduce, prevent, or otherwise mitigate  
2 the ecological effects of storm water and/or non-stormwater discharges into Los  
3 Angeles area waterbodies. The payment shall be mailed via certified mail or  
4 overnight delivery to the attention of Tim Little, Rose Foundation for Communities  
5 and the Environment, 6008 College Avenue Suite 10, Oakland, California 94618-  
6 1382. Defendants shall provide Waterkeeper with a copy of such payment.

7       36. Reimbursement of Plaintiffs' Fees and Costs. The Defendants agree to  
8 partially reimburse Plaintiff for its investigation fees and costs, consultant fees and  
9 costs, reasonable attorneys' fees, and other costs incurred as a result of  
10 investigating and filing the lawsuit, and negotiating a resolution of this matter in an  
11 amount totaling Sixty Thousand Dollars (\$60,000). The Sixty Thousand Dollars  
12 shall be paid in three payments of \$20,000 on June 30, 2013, September 30, 2013,  
13 and December 31, 2013. All such payments shall be made payable to Los Angeles  
14 Waterkeeper and delivered by certified mail or overnight delivery to:

15       Elizabeth Crosson  
16       120 Broadway, Suite 105  
17       Santa Monica, CA 90401

18       37. Stipulated Payment. The Defendants shall make a remediation  
19 payment of Six Hundred Dollars (\$600) for each missed deadline included in this  
20 Consent Decree. Payments for a missed deadline shall be made for the restoration  
21 and/or improvement of the watershed in the area affected by the Defendants'  
22 alleged discharges and shall be awarded to the Rose Foundation for Communities  
23 and the Environment, and mailed via certified mail or overnight delivery to the  
24 attention of Tim Little, Rose Foundation for Communities and the Environment,  
25 6008 College Avenue Suite 10, Oakland, California 94618-1382. The Defendants  
26 agree to make the stipulated payment within thirty (30) days of a missed deadline  
27 and make the payment via overnight delivery or by certified mail. The Defendants  
28

1 shall provide Waterkeeper with a copy of each such payment at the time it is made.

2 **H. Agency Review of Consent Decree**

3 38. Plaintiff shall submit this Consent Decree to the Federal Agencies,  
4 within three (3) days of the final signature of the Parties, for agency review  
5 consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five  
6 (45) days after receipt by both agencies, as evidenced by written acknowledgement  
7 of receipt by the agencies or the certified return receipts, copies of which shall be  
8 provided to Defendants. In the event that the Federal Agencies object to entry of  
9 this Consent Decree, the Parties agree to meet and confer to attempt to resolve the  
10 issue(s) raised by the Federal Agencies.

11 **IV. DISPUTE RESOLUTION**

12 39. This Court shall retain jurisdiction over this matter for the purposes of  
13 adjudicating all disputes among the Parties that may arise under the provisions of  
14 this Consent Decree. The Court shall have the power to enforce this Consent  
15 Decree with all available legal and equitable remedies, including contempt.

16 40. Meet and Confer. A party to this Consent Decree shall invoke the  
17 dispute resolution procedures of this Section by notifying all other Parties in  
18 writing of the matter(s) in dispute and of the party's proposal to resolve the dispute  
19 under this Section. The Parties shall then meet and confer in an attempt to resolve  
20 the dispute no later than fourteen (14) calendar days from the date of the notice.

21 41. If the Parties cannot resolve the dispute within 14 days after the meet  
22 and confer described in Paragraph 40, the party initiating the dispute resolution  
23 provision may invoke formal dispute resolution by filing a motion before the  
24 United States District Court for the Central District of California. The Parties shall  
25 jointly apply to the Court for an expedited hearing schedule on the motion.

26 42. If Waterkeeper initiates a motion or proceeding before the Court to  
27 enforce the terms and conditions of this Consent Decree, Waterkeeper shall be  
28

1 entitled to recover reasonable fees and costs incurred to enforce the terms of this  
2 Consent Decree consistent with the provisions of Sections 505 and 309 of the  
3 CWA, 33 U.S.C. §§ 1365, 1319.

4 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO**  
5 **SUE**

6 43. In consideration of the above, upon the Effective Date of this Consent  
7 Decree, the Parties hereby fully release, except for claims for Defendants' failure  
8 to comply with this Consent Decree and as expressly provided below, each other  
9 and their respective successors, assigns, officers, agents, employees, and all  
10 persons, firms and corporations having an interest in them, from any and all  
11 alleged CWA violations claimed in the Complaint, up to and including the  
12 Effective Date of this Consent Decree.

13 44. Nothing in this Consent Decree limits or otherwise affects Plaintiff's  
14 right to address or take any position that it deems necessary or appropriate in any  
15 formal or informal proceeding before the Regional Board, EPA, or any other  
16 judicial or administrative body on any other matter relating to Defendants.

17 45. Neither the Consent Decree nor any payment pursuant to the Consent  
18 Decree shall constitute or be construed as a finding, adjudication, or  
19 acknowledgement of any fact, law or liability, nor shall it be construed as an  
20 admission of violation of any law, rule, or regulation. The Defendants maintain and  
21 reserve all defenses they may have to any alleged violations that may be raised in  
22 the future.

23 46. Force Majeure. The Defendants shall notify Waterkeeper pursuant to  
24 the terms of this paragraph, when timely implementation of the requirements set  
25 forth in this Consent Decree becomes impossible, despite the timely good-faith  
26 efforts of the Defendants, due to circumstances beyond the reasonable control of  
27 the Defendants or their agents, and which could not have been reasonably foreseen  
28

1 and prevented by the exercise of due diligence by the Defendants. Any delays due  
2 to Defendants' failure to make timely and bona fide applications and to exercise  
3 diligent efforts to obtain necessary permits, or due to normal inclement weather,  
4 shall not, in any event, be considered to be circumstances beyond Defendants'  
5 control. In no circumstances shall a claim of inability to pay be considered Force  
6 Majeure.

7           a. If the Defendants claim impossibility, they shall notify Waterkeeper in  
8 writing within twenty-one (21) days of the date that the Defendants first knew of  
9 the event or circumstance that caused or would cause a violation of this Consent  
10 Decree. The notice shall describe the reason for the nonperformance and  
11 specifically refer to this Section. It shall describe the anticipated length of time the  
12 delay may persist, the cause or causes of the delay, the measures taken or to be  
13 taken by the Defendants to prevent or minimize the delay, the schedule by which  
14 the measures will be implemented, and the anticipated date of compliance. The  
15 Defendants shall adopt all reasonable measures to avoid and minimize such delays.

16           b. The Parties shall meet and confer in good-faith concerning the non-  
17 performance and, where the Parties concur that performance was or is impossible,  
18 despite the timely good faith efforts of the Defendants, due to circumstances  
19 beyond the control of Defendants that could not have been reasonably foreseen and  
20 prevented by the exercise of due diligence by the Defendants, new deadlines shall  
21 be established.

22           c. If Waterkeeper disagrees with the Defendants' notice, or in the event  
23 that the Parties cannot timely agree on the terms of new performance deadlines or  
24 requirements, either party shall have the right to invoke the Dispute Resolution  
25 Procedure pursuant to Section IV. In such proceeding, the Defendants shall bear  
26 the burden of proving that any delay in performance of any requirement of this  
27 Consent Decree was caused or will be caused by force majeure and the extent of  
28



any delay attributable to such circumstances.

## **VI. MISCELLANEOUS PROVISIONS**

47. Construction. The language in all parts of this Consent Decree shall be construed according to its plain and ordinary meaning, except as to those terms defined in the Storm Water Permit, the Clean Water Act, or specifically herein.

48. Choice of Law. The laws of the United States shall govern this Consent Decree.

49. Severability. In the event that any provision, paragraph, section, or sentence of this Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

50. Correspondence. All notices required herein or any other correspondence pertaining to this Consent Decree shall be sent by regular mail or electronic mail as follows:

If to Plaintiff:

Tatiana Gaur  
Staff Attorney  
Los Angeles Waterkeeper  
120 Broadway, Suite 105  
Santa Monica, CA 90401  
[tgaur@lawaterkeeper.org](mailto:tgaur@lawaterkeeper.org)

With copies to:

Elizabeth Crosson  
Executive Director  
Los Angeles Waterkeeper  
[liz@lawaterkeeper.org](mailto:liz@lawaterkeeper.org)

If to Defendants:

William W. Funderburk, Jr.  
Anna L. Le May

1 Castellón & Funderburk LLP  
2 811 Wilshire Boulevard, Suite 1025  
3 Los Angeles, CA 90017  
4 wfunderburk@candffirm.com  
5 alemay@candffirm.com

6 With copies to:

7 Don Monroe  
8 C & M Metals Inc.  
9 1709 East 24th Street  
10 Los Angeles, CA 90058  
11 cmmetals@gmail.com

12 Notifications of communications shall be deemed submitted three (3) days  
13 after the date that they are postmarked and sent by first-class mail, or immediately  
14 after acknowledgement of receipt via email by the receiving party. Any change of  
15 address or addresses shall be communicated in the manner described above for  
16 giving notices.

17 51. Effect of Consent Decree. Plaintiff does not, by its consent to this  
18 Consent Decree, warrant or aver in any manner that the Defendants' compliance  
19 with this Consent Decree will constitute or result in compliance with any federal or  
20 state law or regulation. Nothing in this Consent Decree shall be construed to affect  
21 or limit in any way the obligation of the Defendants to comply with all federal,  
22 state, and local laws and regulations governing any activity required by this  
23 Consent Decree.

24 52. Counterparts. This Consent Decree may be executed in any number  
25 of counterparts, all of which together shall constitute one original document.  
26 Telecopy and/or facsimile copies of original signature shall be deemed to be  
27 originally executed counterparts of this Consent Decree.

28 53. Modification of the Consent Decree. This Consent Decree, and any

provisions herein, may not be changed, waived, discharged, or terminated unless by a written instrument, signed by the Parties.

54. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

55. Integration Clause. This is an integrated Consent Decree. This Consent Decree is intended to be a full and complete statement of the terms of the agreement between the parties and expressly supersedes any and all prior oral or written agreements, covenants, representations, and warranties (express or implied) concerning the subject matter of this Consent Decree.

56. Authority. The undersigned representatives for Plaintiff and Defendants each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Consent Decree.

57. The provisions of this Consent Decree apply to and bind the Parties, including any successors or assigns. The Parties certify that their undersigned representatives are fully authorized to enter into this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

58. The Parties agree to be bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms. By entering into this Consent Decree, the Defendants do not admit liability for any purpose as to any allegation or matter arising out of this Action.

**IT IS SO ORDERED:**

Date: May 21, 2013



Honorable Dean D. Pregerson  
UNITED STATES DISTRICT JUDGE  
CENTRAL DISTRICT OF CALIFORNIA